

contracting officer determines that (a) the Government already has the data, (b) the data is otherwise readily available, or (c) it is impracticable for the Government to vary its future requirements.

[52 FR 30076, Aug. 12, 1987]

7.204 Responsibilities of contracting officers.

(a) Contracting officers are responsible for transmitting offeror responses to the solicitation provision at 52.207-4 to appropriate inventory management/requirements development activities in accordance with agency procedures. The economic purchase quantity data so obtained are intended to assist inventory managers in establishing and evaluating economic order quantities for supplies under their cognizance.

(b) In recognition of the fact that economic purchase quantity data furnished by offerors are only one of many data inputs required for determining the most economical order quantities, contracting officers should generally take no action to revise quantities to be acquired in connection with the instant procurement. However, if a significant price variation is evident from offeror responses, and the potential for significant savings is apparent, the contracting officer shall consult with the cognizant inventory manager or requirements development activity before proceeding with an award or negotiations. If this consultation discloses that the Government should be ordering an item of supply in different quantities and the inventory manager/requirements development activity concurs, the solicitation for the item should be amended or canceled and a new requisition should be obtained.

Subpart 7.3—Contractor Versus Government Performance

7.300 Scope of subpart.

This subpart prescribes policies and procedures for use in acquisitions of commercial or industrial products and services subject to (a) OMB Circular No. A-76 (Revised) (the Circular), Performance of Commercial Activities, and (b) the Supplement to the Circular.

[57 FR 60575, Dec. 21, 1992]

7.301 Policy.

The Circular provides that it is the policy of the Government to (a) rely generally on private commercial sources for supplies and services, if certain criteria are met, while recognizing that some functions are inherently Governmental and must be performed by Government personnel, and (b) give appropriate consideration to relative cost in deciding between Government performance and performance under contract. In comparing the costs of Government and contractor performance, the Circular provides that agencies shall base the contractor's cost of performance on firm offers.

7.302 General.

The Circular and the Supplement—

(a) Prescribe the overall policies and detailed procedures required of all agencies in making cost comparisons between contractor and Government performance. In making cost comparisons, agencies shall—

(1) Prepare an estimate of the cost of Government performance based on the same work statement and level of performance as apply to offerors; and

(2) Compare the total cost of Government performance to the total cost of contracting with the potentially successful offeror.

(b) Provide that solicitations and synopses of the solicitations issued to obtain offers for comparison purposes shall state that they will not result in a contract if Government performance is determined to be more advantageous (see the solicitation provisions at 52.207-1 and 52.207-2);

(c) Provide that each cost comparison shall be reviewed by an activity independent of the activity which prepared the cost analysis to ensure conformance with the instructions in the Supplement; and

(d) Provide that, ordinarily, agencies should not incur the delay and expense of conducting cost comparison studies when the full-time equivalent Government employees involved are fewer than those specified by law, the Circular, and implementing agency guidance. Cost comparisons may be conducted in these instances if there is

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reason to believe that commercial prices are unreasonable.

[50 FR 35475, Aug. 30, 1985, as amended at 53 FR 17856, May 18, 1988; 55 FR 25526, June 21, 1990; 57 FR 60575, Dec. 21, 1992]

7.303 Determining availability of private commercial sources.

(a) During acquisition planning reviews, contracting officers must assist in identifying private commercial sources.

(b) In making all reasonable efforts to identify such sources, the contracting officer must assist in—

(1) Synopsizing the requirement through the Governmentwide point of entry (GPE) in accordance with 5.205(e) until a reasonable number of potential sources are identified. If necessary, a synopsis must be submitted up to three times in a 90-day period with a minimum of 30 days between notices (but, when necessary to meet an urgent requirement, this notification may be limited to a total of two notices in a 30-day period with a minimum of 15 days between them); and

(2) Requesting assistance from the Small Business Administration, the Department of Commerce, and the General Services Administration.

(3) If sufficient sources are not identified through synopses or from subparagraph (b)(2) of this section, a finding that no commercial source is available may be made and the cost comparison canceled.

[48 FR 42124, Sept. 19, 1983, as amended at 55 FR 25526, June 21, 1990; 57 FR 60575, Dec. 21, 1992; 66 FR 27412, May 16, 2001]

7.304 Procedures.

(a) *Work statement.* When private commercial sources are available and a cost comparison is required, the Government's functional managers responsible for the comparison or another group shall prepare a comprehensive, performance work statement. The work statement must—

(1) Accurately reflect the actual Government requirement, stating adequately *what* is to be done without prescribing *how* it is to be done;

(2) Include performance standards that can be used to ensure a comparable level of performance for both

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Government and contractor and a common basis for evaluation; and

(3) Be reviewed by the contracting officer to ensure that it is adequate and appropriate to serve as a basis for solicitation and award.

(b) *Cost estimate.* The agency personnel who develop the cost estimate for Government performance—

(1) Enter on a cost comparison form (see Part IV of the Supplement) the cost estimate and the other elements required to accomplish a cost comparison;

(2) Review the estimate for completeness and accuracy and have the estimate audited; and

(3) Submit to the contracting officer the completed form and all necessary detailed supporting data in a sealed, dated envelope, or electronic equivalent, not later than the time established for receipt of initial proposals or bid opening. If more time is needed to develop the Government's cost estimate, the contracting officer shall amend the opening date of the solicitation.

(c) *Solicitation.* (1) The contracting officer shall issue a solicitation based on the performance work statement prepared in accordance with paragraph (a) of this section. Prepriced option prices in existing contracts will not be used instead of issuing a new solicitation when conducting a cost comparison under a new start.

(2) Firm offers shall be required for the period covered by the cost comparison, by using (i) a base contract period and any applicable priced options to total the amount of time represented by the cost estimate for Government performance (see subpart 17.2), or (ii) a multiyear contract when appropriate (see subpart 17.1).

(3) Solicitations shall not, unless a proper determination to the contrary is made, limit award to U.S. offerors.

(d) *Integrity of cost comparison.* (1) The confidentiality of (i) the cost estimate for Government performance and (ii) the bids in sealed bid cost comparisons shall be maintained until the time of bid opening, to ensure that they are completely independent.

(2) For cost comparisons conducted using the results of negotiation procedures, confidentiality and independence shall be maintained until after negotiations are completed and the most advantageous offer has been selected.

(3) Personnel who have knowledge of the cost figures in the cost estimate for Government performance shall not participate in the offer-evaluation process unless the contract file is adequately documented to show that no other qualified personnel were available.

[48 FR 42124, Sept. 19, 1983, as amended at 50 FR 1735, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 25526, June 21, 1990; 57 FR 60575, Dec. 21, 1992; 60 FR 34737, July 3, 1995]

7.305 Solicitation provisions and contract clause.

(a) The contracting officer shall, when contracting by sealed bidding, insert in solicitations issued for the purpose of comparing the costs of contractor and Government performance the provision at 52.207-1, Notice of Cost Comparison (Sealed-Bid).

(b) The contracting officer shall, when contracting by negotiation, insert in requests for proposals issued for the purpose of comparing the costs of contractor and Government performance the provision at 52.207-2, Notice of Cost Comparison (Negotiated).

(c) The contracting officer shall insert the clause at 52.207-3, Right of First Refusal of Employment, in all solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the solicitations, whether or not a cost comparison is conducted. The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.

[48 FR 42124, Sept. 19, 1983, as amended at 50 FR 1735, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 52 FR 9037, Mar. 20, 1987; 56 FR 55372, Oct. 25, 1991]

7.306 Evaluation.

The evaluation procedure to be followed after the contracting officer receives the cost estimate for Government performance (see 7.304(b)) and the responses to the solicitation differs

from conventional contracting procedures as follows:

(a) *Sealed bidding.* (1) At the public bid opening, after recording of bids, the contracting officer shall—

(i) Open the sealed cost comparison on which the cost estimate for Government performance has been entered;

(ii) Enter on the cost comparison form the price of the apparent low bidder;

(iii) Announce the result, based on the initial cost comparison form, stating that this result is subject to required agency processing, including evaluation for responsiveness and responsibility, completion and audit of the cost comparison form (see Supplement, Part IV, Illustration 1), and resolution of any requests for review under the appeals procedure (see 7.307);

(iv) State that no final determination for performance by the Government or under contract will be made during the public review period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex; the public review period begins when the documents identified in (v) below are available to interested parties), plus any additional time required for the appeals procedure; and

(v) Make available for this public review by interested parties the abstract of bids, completed cost comparison form, and detailed data supporting the cost estimate for Government performance.

(2) After evaluation of bids (see subpart 14.4) and determinations of responsibility, the contracting officer shall provide the price of the low responsive, responsible bidder to the preparer of the cost estimate for Government performance, for final Government review of the cost comparison form.

(3) Upon completion of the review process, including resolution of any request under 7.307, the responsible agency official shall make the final determination for performance by the Government or under contract and provide written notification to the contracting officer, who shall either award a contract or cancel the solicitation as required.

(4) The contracting officer shall make the completed and approved cost

comparison analysis available to interested parties upon request.

(b) *Negotiation.* The contracting officer shall receive proposals, evaluate them (see subpart 15.3), conduct negotiations, and select the most advantageous proposal in accordance with normal contracting procedures (see part 15). The contracting officer shall, before public announcement, open the sealed estimate in the presence of the preparer, enter the amount of the most advantageous proposal on the cost comparison form, and return the form to the preparer of the cost estimate for Government performance for completion. The preparer shall give due consideration to all types of costs which could add or subtract from the cost of either mode of performance.

(1) If the result of the cost comparison favors performance under contract and the responsible agency official approves the result, the contracting officer shall award a contract in accordance with agency procedures. Concurrently with the award, the contracting officer shall publicly—

- (i) Notify interested parties of the result of the cost comparison;
- (ii) Inform interested parties that the completed cost comparison form and detailed supporting data are available for review;
- (iii) Announce the contractor's name; and

(iv) Advise interested parties that contractor preparations for performance are conditioned upon completion of the public review period specified in the solicitation plus any additional period required by the appeals procedure.

(2) If the result of the cost comparison favors Government performance, the contracting officer shall—

- (i) Notify interested parties of the result of the cost comparison;
- (ii) Inform interested parties that the completed cost comparison form and detailed supporting data relative to the Government cost estimate are available for public review (see subparagraph (3) below); and

(iii) Announce the price of the offer most advantageous to the Government.

(3) The public review period shall begin with the contracting officer's announcement of the cost comparison result and availability of the cost com-

parison forms and detailed supporting data to interested parties. The review period shall last for the period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex). Upon completion of the public review period and resolution of any questions raised under 7.307, the responsible agency official shall provide the contracting officer written notification of the final cost comparison decision. The contracting officer shall then, in the case of subparagraph (b)(1) of this section, give the contractor notice to commence or cancel the contract as appropriate or, in the case of subparagraph (b)(2) of this section, cancel the solicitation or award the contract, as appropriate.

[48 FR 42124, Sept. 19, 1983, as amended at 50 FR 1735, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 34125, Sept. 3, 1986; 53 FR 661, Jan. 11, 1988; 55 FR 25526, June 21, 1990; 56 FR 41744, Aug. 22, 1991; 57 FR 60575, Dec. 21, 1992; 60 FR 34737, July 3, 1995; 62 FR 51270, Sept. 30, 1997]

7.307 Appeals.

(a) The Circular provides that each agency shall establish an appeals procedure for informal administrative review of the initial cost comparison result. The appeals procedure shall provide for an independent, objective review of the initial result by an official at a higher level than the official who approved that result. The purpose is to protect the rights of affected parties and to ensure that final agency determinations are fair, equitable, and in accordance with established policy.

(b) The Circular provides that the appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and shall not apply to questions concerning selection of one contractor in preference to another, which shall be treated as prescribed in subpart 33.1, Protests. Directly affected parties may request review of any discrepancy in the cost comparison. Any such requests shall be made in writing to the contracting officer, who shall forward them in accordance with agency procedures. Such requests shall be considered only if based on specific objections

and received within the public review period stated in the solicitation.

[48 FR 42124, Sept. 19, 1983, as amended at 55 FR 25527, June 21, 1990; 57 FR 60575, Dec. 21, 1992; 60 FR 34737, July 3, 1995; 62 FR 40236, July 25, 1997]

Subpart 7.4—Equipment Lease or Purchase

7.400 Scope of subpart.

This subpart provides guidance pertaining to the decision to acquire equipment by lease or purchase. It applies to both the initial acquisition of equipment and the renewal or extension of existing equipment leases.

7.401 Acquisition considerations.

(a) Agencies should consider whether to lease or purchase equipment based on a case-by-case evaluation of comparative costs and other factors. The following factors are the minimum that should be considered:

(1) Estimated length of the period the equipment is to be used and the extent of use within that period.

(2) Financial and operating advantages of alternative types and makes of equipment.

(3) Cumulative rental payments for the estimated period of use.

(4) Net purchase price.

(5) Transportation and installation costs.

(6) Maintenance and other service costs.

(7) Potential obsolescence of the equipment because of imminent technological improvements.

(b) The following additional factors should be considered, as appropriate, depending on the type, cost, complexity, and estimated period of use of the equipment:

(1) Availability of purchase options.

(2) Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.

(3) Trade-in or salvage value.

(4) Imputed interest.

(5) Availability of a servicing capability, especially for highly complex equipment; e.g., can the equipment be serviced by the Government or other sources if it is purchased?

7.402 Acquisition methods.

(a) *Purchase method.* (1) Generally, the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative leasing costs exceed the purchase costs.

(2) Agencies should not rule out the purchase method of equipment acquisition in favor of leasing merely because of the possibility that future technological advances might make the selected equipment less desirable.

(b) *Lease method.* (1) The lease method is appropriate if it is to the Government's advantage under the circumstances. The lease method may also serve as an interim measure when the circumstances—

(i) Require immediate use of equipment to meet program or system goals; but

(ii) Do not currently support acquisition by purchase.

(2) If a lease is justified, a lease with option to purchase is preferable.

(3) Generally, a long term lease should be avoided, but may be appropriate if an option to purchase or other favorable terms are included.

(4) If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase.

[50 FR 35475, Aug. 30, 1985, as amended at 59 FR 67026, Dec. 28, 1994]

7.403 General Services Administration assistance.

(a) When requested by an agency, the General Services Administration (GSA) will assist in lease or purchase decisions by providing information such as—

(1) Pending price adjustments to Federal Supply Schedule contracts;

(2) Recent or imminent technological developments;

(3) New techniques; and

(4) Industry or market trends.

(b) Agencies may request information from the following GSA offices:

(1) Center for Strategic IT Analysis (MKS), Washington, DC 20405, for information on acquisition of information technology.

(2) Federal Supply Service, Office of Acquisition (FC), Washington, DC